



Gen. Op. No. 11 - ITB12

JOSEPH R. BIDEN, III  
ATTORNEY GENERAL

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August 18, 2011

Mr. Martin D. Shuey  
6312 Ray Road  
Bridgeville, DE 19933

**RE: Freedom of Information Act Complaint Against  
Town of Woodbridge School Board**

Dear Mr. Shuey:

On or about July 12, 2011, you asked for an Attorney General's determination as to whether the Woodbridge School Board ("Board") violated the Freedom of Information Act, 29 *Del. C.* ch. 100 ("FOIA"). The Delaware Department of Justice having received the Board's response to your complaint, this is our determination pursuant to 29 *Del. C.* § 10005(e).<sup>1</sup>

**FACTS**

You allege that on May 3, 2011, at least three Board members attended a Meet the Candidates night at the Woodbridge Elementary School, and that on June 23, 2011, three Board members attended a Bond Committee hearing in Dover. The Board responds that the members did not discuss the Board's business at either of those functions, the second of which they attended in order to hear your objections to the Bond Bill.

At the Board's June 14, 2011 meeting, the Board voted on the hiring of a new superintendent, which action was not listed on the posted agenda for the meeting. The Board

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<sup>1</sup> You also complain that the Board meets in executive session before the public meeting to discuss, and even vote on, every item on the agenda. However, as you have presented no specific facts supporting that complaint, we do not address it.

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responds that the June 14 vote was a duplication of the vote that took place on May 25, 2011, at about 11:45 in the evening, after all public observers had left. In order to keep the public informed, the Board voted again on June 14.

#### **RELEVANT STATUTES**

A meeting for purposes of FOIA "means the formal or informal gathering of a quorum . . . for the purpose of discussing or taking action on public business . . . ." 29 Del. C. § 10002(c).

Section 10004(e)(2) of FOIA provides the criteria for proper notice of meetings and preparation of agendas:

All public bodies shall give public notice of their regular meetings and of their intent to hold an executive session closed to the public, at least 7 days in advance thereof. The notice shall include the agenda, if such has been determined at the time, and the dates, times and places of such meetings, including whether such meeting will be conducted by video-conferencing; however, the agenda shall be subject to change to include additional items including executive sessions or the deletion of items including executive sessions which arise at the time of the public body's meeting.

Section 10002(a) defines "agenda" as, "a general statement of the major issues expected to be discussed at a public meeting . . . ."

#### **DISCUSSION**

Two of your complaints involve Board members attending meetings or functions other than Board meetings. You do not allege that the Board members met "for the purpose" of discussing public business of the Board at those meetings or functions. 29 Del. C. § 10002(c). Nor is there any evidence that they even discussed public business of the Board. FOIA does not prohibit members of a public body from participating in other groups or attending other

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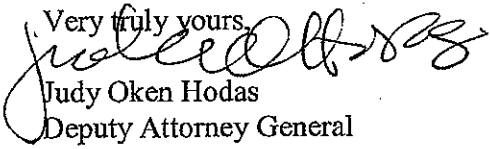
functions, so long as at those gatherings they do not discuss, as a quorum, the public business of the public body of which they are members.

You also complain that on June 14, 2011 the Board voted for a new superintendent, when that vote was not on the agenda. While technically the vote on June 14 should have been on the agenda for that meeting, no harm was caused by the omission because the vote simply repeated what had already occurred in a public – although no member of the public was present – meeting. To require this omission to be remedied would be to require yet a third vote, when the first vote was perfectly sufficient.


#### CONCLUSION

For the reasons stated above, we conclude that the Board technically violated FOIA when it voted on an issue not on the agenda, and that was not an emergency that arose at the time of the meeting. *See 29 Del. C. § 10004(e)(2)* (“[T]he agenda shall be subject to change to include additional items . . . which arise at the time of the public body’s meeting.”) However, because that vote was simply a repeat of a properly noticed vote, a third vote on the same issue is unnecessary.

Very truly yours,

  
Judy Oken Hodas  
Deputy Attorney General

APPROVED

  
Lawrence W. Lewis  
State Solicitor

cc: Mr. Paul M. Breeding, President, Woodbridge School District

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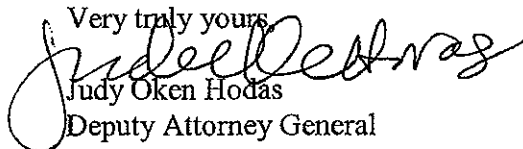
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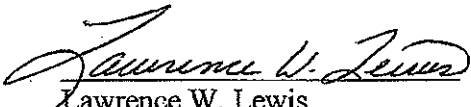
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